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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,624	02/27/2004	Troy L. Cooper	17319	6525
26637	7590	02/18/2005	EXAMINER	
CNH AMERICA LLC INTELLECTUAL PROPERTY LAW DEPARTMENT 700 STATE STREET RACINE, WI 53404			MAMMEN, NATHAN SCOTT	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/788,624	COOPER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Nathan S Mammen	3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.  
 4a) Of the above claim(s) 8-38 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-7 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/27/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 523,508 to Bauer et al.

The Bauer '508 patent discloses a disk blade scraper having a bracket (c) connected to the frame and a rotating disk (e) mounted to the bracket and having an axis of rotation and a circumference parallel to the axis of rotation. The bracket is connected to the frame and the rotating disk is mounted to the bracket such that the circumferential edge of the rotating disk is adjacent the transition joint of the disk (intersection of disks and shaft C). Note: The Bauer '508 patent does not show the some of the details of the tillage implement recited in the preamble of the instant claim, specifically, the plurality of disk blades arranged on the shaft and the hub extending between the disk blades. But the preamble of the instant claim 1 recites “[a] **disk blade scraper for a tillage implement [having the aforementioned arrangement], the scraper comprising:**” (emphasis added). Thus, the tillage implement is the intended use of the claimed disk blade scraper, and a disk blade scraper, such as the one Bauer discloses, anticipates as long as it has the claimed structural elements of the instant claims and is capable of performing the intended use, i.e., capable of being used on the intended structure. See In re Schreiber, 128 F.3d 1473 (Fed. Cir. 1997).

Regarding claims 2-7: The circumferential edge of the rotating disk is adjustable and can be adjusted from a position contacting the transition joint to a position between 0.03 to 0.13 inches away from the transition joint. See lines 61-64. The rotating disk is located in the annular depression of the concave disk. See lines 46-47. The upper most edge of the rotating disk does not extend above the uppermost edge of the disk blade. See the Figure.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,833,067 to Peterson, Jr. et al., cited by Applicant, in view of U.S. Patent No. 523,508 to Bauer et al.

The Peterson '067 patent discloses a tillage implement having a frame (10), a horizontal shaft (14) suspended from the frame, a plurality of rotating disk blades (12) arranged in a laterally spaced relationship on the shaft, a hub spool (16) surrounding the shaft between a pair of disk blades, wherein a first end of the hub spool contacts one of the pair of adjacent disk blades thereby creating a transition joint. The tillage implement further comprises a disk blade scraper (68) positioned adjacent the transition joint. What the Peterson '067 patent does not disclose is that the disk blade scraper is a rotating disk. The Bauer '508 patent teaches a disk blade scraper comprising a rotating disk and having the features detailed in paragraph 2 above. It would have been obvious to one having ordinary skill in the art at the time the invention was

made to provide the tillage implement of the Peterson '067 patent with the rotating disk blade scraper as taught by the Bauer '508 patent in order to provide an improved means for scouring the disk blades.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas B. Will  
Supervisory Patent Examiner  
Group 3600

NSM  
2/15/05

Nathan S. Mammen